

# Bulgaria: COVID-19 as an Excuse to Solidify Autocracy?

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On 23 March 2020, Bulgaria's Parliament enacted a [Law on the Measures and Actions during the State of Emergency Announced by Parliament on 13 March 2020](#) (hereby referred to as Law on Emergency for brevity). This was the second attempt to enact this piece of legislation after Bulgaria's President vetoed some of its provisions. This new Law entered into force retroactively on 13 March 2020 when Parliament [declared a state of emergency \(\*izvunredno polojenie\*\)](#) in light of COVID-19. The peculiar situation that Parliament can declare a state of emergency, define its scope and provide guidance on the measures which could be taken later, and apply the law retroactively to justify measures and actions taken by the executive in the period before defining these terms is troublesome from a rule of law perspective. Moreover, some of the measures go beyond healthcare concerns and create opportunities for arbitrariness and human rights violations. Besides, the circumstances, which informed some of the provisions, seem to illustrate longstanding problems of Bulgaria's democracy.

## Vague and Messy Legal Framework

Not only is Bulgaria's legal framework pertaining to emergencies vague, but also it seems to conflate notions, which opens the door to abuses. The Constitution provides little guidance on what a state of emergency is and what its terms could be. Article 84(12) of the [Constitution](#) stipulates that Parliament can declare martial law or another type of state of emergency upon the proposal of the Council of Ministers or the President. Pursuant its Article 57(3), a Law could be enacted to limit citizens' rights in cases of war, martial law or another type of state of emergency, but it cannot compromise the right to life, freedom from torture/degrading treatment, the right to a fair trial, the right to private life, and the right to freedom of thought. The [Law on Defense and Armed Forces](#), which refers to both martial law and a state of emergency, seems to define the state of emergency as a military question. Article 122 specifies that a 'state of emergency' could be declared by Parliament if there is 'a risk' of involving the country 'in a military-political crisis or in an armed conflict'. Article 123 defines the powers of the army in such cases.

The [Law on Defense against Disasters](#) has a broad definition of 'disaster' (Article 2), which can encompass the COVID-19 pandemic, and strict guidelines about the measures institutions could take in case of *bedstveno polojenie*, which can be translated as a 'state of distress' or 'a state of emergency due to a disaster'. Declaring such a state can be done on a municipal, regional or state level and does not pass through Parliament. This is the traditional tool Bulgaria uses to handle crises due to floods, draught, etc. However, very likely because of the restrictions on the types of measures which can be imposed in cases of emergencies due to

disasters in this Law, Bulgaria's government chose the vague pathway of 'state of emergency'.

Finally, it should be noted that after the state of emergency was declared on 13 March 2020, the colleges of the Supreme Judicial Council (SJC) took their own measures to adapt to the COVID-19 crisis. On 15 March 2020, the judicial college [took the decision](#) to freeze most criminal, civil, commercial, and administrative proceedings in courts, to interrupt the registration of claims, and to forbid physical access to court by citizens (e-justice is not developed at all in Bulgaria). Luckily, following [public uproar](#), subsequent decisions by SJC's judicial college, the latest one of [31 March 2020](#), introduced exceptions allowing citizens to challenge diverse actions and decisions by state institutions during the state of emergency. This alleviated some of the concerns that citizens would not be able to contest arbitrary actions by the executive during the state of emergency. For example, prior to the latest decision by SJC's judicial college, courts could not examine the legality of administrative actions/omissions while this state of emergency lasted. Despite progress made as a result of the latest decisions by SJC's judicial college, diverse concerns remain. For instance, [hearings to determine pre-trial custody measures](#), which the Prosecutor's Office traditionally misemploys, have automatically become closed pursuant to SJC's judicial college's decision of 15 March 2020, so civil society cannot monitor them. Moreover, some members of the SJC have raised a voice against a possible contradiction between the measures taken by SJC's judicial college and the Law on Emergency — they [believe](#) that because of the dubious wording of the aforementioned Law, it is unclear if courts can examine the legality of orders by the executive at all.

## Unnecessary Crackdown on Human Rights

The Law on Emergency, in its current shape, has problematic provisions from the perspective of the rule of law and human rights. Considering courts are not fully functioning because of the measures taken by SJC's judicial college in light of COVID-19 and having in mind that Bulgaria's Minister of Justice [made a vague, albeit alarming statement](#), that Bulgaria would ask for a derogation pursuant to Article 15 of the European Convention on Human Rights, the door to finding relief might be about to close.

For example, Article 10(5) of the new Law authorizes the army to use physical force against civilians if it is 'absolutely necessary', but how this threshold will be observed and enforced in these evolving circumstances is difficult to say. Article 2 allows the Minister of Healthcare to impose any measures beyond the Law on Healthcare he deems necessary during the state of emergency, without Parliament approval, which is extremely vague. The scope of these measures is not specified (we only see they should comply with existing laws), so it seems he is now entitled to implement measures in all areas of law based on his whims (criminal law, commercial law, etc. included).

A seemingly minor, but not at all benign amendment to the [Law on Electronic Communication](#), implemented through the Law on Emergency, allows the police

to ask Telecommunication companies for an ‘immediate access’ to traffic data of users, without judicial oversight. This is not just a violation of the right to private life. Considering the [rampant corruption](#) and the rule of law decline in Bulgaria, there are obvious [concerns](#) this provision will not just be used to track if people under quarantine observe it, as it is ‘intended’. Instead, it may be used to gather information about government critics — the police does not need to present any proof to these providers that the person is under quarantine, etc. (even if they had do, this can easily be falsified).

As mentioned above, the President vetoed some of the provisions of the Law on Emergency. These provisions were included because of the impulses of the Prosecutor’s Office. [In prior work](#), I have showcased how Bulgaria’s Prosecutor’s Office is considered a threat to the rule of law because of its excessive powers mimicking the Soviet prosecution model and the lack of checks and balances, which permit the misuse of this institution for political aims. This can be seen in the COVID-19 crisis, too. For example, the Prosecutor’s Office [opened investigations](#) against doctors in a state hospital designated to treat COVID-19 because they publicly complained from lack of equipment. It is in this context that the Prosecutor’s Office asked for the criminalization of spreading false information regarding COVID-19 and severe sanctions (prison sentences) which Parliament included in the draft of the Law on Emergency. Beyond the key issue of freedom of speech, how the Prosecutor’s Office can judge if information about a specific and evolving medical issue is true, when it is clear they have no expertise in epidemiology or medicine at large, is a mystery which also opens the door for abuses against critics. While the President managed to veto this provision, Bulgaria’s ruling party [said](#) it would work on this provision further and enact it at a later stage.

## Solidifying Autocracy

Bulgaria’s government, which has been [following the autocratic playbook](#) for a long while, seems to be creating loopholes to exploit the COVID-19 crisis. In the Bulgarian context, ‘mistakes’ are rarely accidental. Prime Minister Boyko Borissov enjoys full comfort in Parliament. The only institution that can engage in corrective behavior is the Presidency which has very limited powers (the current President Rumen Radev is from the opposition). Parliament is not bound by a presidential veto. It seems that it complied with the veto this time because the President only targeted two provisions and Parliament was in a rush to define the terms of the state of emergency. Yet, what about the next time? Parliament traditionally ignores presidential vetoes on Bills concerning human rights — one of the most flagrant examples was [the Bill on secret arrests](#) which was enacted at the end. There are plenty of [draft laws](#) aiming to enforce Borissov’s police state which may be revamped as ‘state of emergency’ Bills. In fact, on 26 March 2020, Parliament [took the decision](#) to sit to consider ‘only Bills pertaining to the state of emergency’ during the state of emergency, which closed the door to effective parliamentary control of administrative rulemaking — a sure sign that Bulgaria’s democracy is further endangered.

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*The article is current as of the latest publicly available information by state institutions on 3 April 2020.*

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